

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

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|----------------------------------|---|-----------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| v. |) | No. 1:19-cr-59 |
| |) | |
| DANIEL EVERETTE HALE, |) | Hon. Liam O’Grady |
| |) | |
| Defendant. |) | Motion Hr’g: Oct. 18, 2019 |

REPLY IN SUPPORT OF MOTION FOR BILL OF PARTICULARS

Perhaps the best evidence that a bill of particulars is needed in this case is the government’s response to the defense’s motion. Govt Resp., Dkt. No. 68. In its response, the government claims an entirely different theory of Count 1 than the superseding indictment and all other indications from the government had previously conveyed. *See* Govt Resp. at 7. Notwithstanding its prolixity—perhaps because of it—the indictment obscures the specific conduct that the government claims is the subject of its allegations. The indictment’s length is not dispositive; rather, it is whether the indictment provides the defense “with reasonable certainty[] of the nature of the accusation against him.” Def. Motion for Bill of Particulars, Dkt. No. 50, at 3-4 (quoting *Russell v. United States*, 369 U.S. 749, 764-65 (1962)).

Here, the government in its response claims for the first time that Mr. Hale, himself—not a reporter or a news organization—is the second individual referred to in Count 1. That is, the government contends the defense needed no further information to know that Count 1 alleges that Mr. Hale unlawfully obtained certain documents containing national defense information knowing he, himself, would

obtain, take, make or dispose of those documents contrary to the provisions of the Espionage Act. Setting aside the linguistic tangle that this theory engenders, it is also at odds with the thrust of the superseding indictment. The superseding indictment definitively points to “the reporter” as the theoretical recipient of the allegedly unlawfully obtained material. The superseding indictment refers to “the reporter” almost 50 times. In comparison, it refers to “[Mr.] Hale” about 75 times, including the case caption. Abundantly clear from the indictment is that the government’s theory of the case is that Mr. Hale obtained documents containing, it says, national defense or classified communications information, and “leaked” that information to the reporter. The defense has never understood the government’s theory of Count 1 or any count to be that Mr. Hale obtained certain documents for himself. Moreover, the revelation that Mr. Hale is both the subject and object of Count 1 implicates the defense’s Motion to Dismiss Multiplicitous Counts, altering the calculus of what conduct each count is intended to prosecute.

That the government wrote a lengthy superseding indictment and managed to obscure the individual who is the object of Count 1 is illustrative of the reason the defense has sought a bill of particulars. But the confusion around Count 1 is not the only example of the indictment’s obfuscation. Given the superseding indictment’s length, its silence on certain critical elements is noteworthy. For example, the superseding indictment’s 16 pages never even hint at the valuation method that the government alleges triggers the \$1,000 threshold for a felony charge under 18 U.S.C. § 641. *See* Def. Motion, Dkt. No. 50, at 2.

Accordingly, and for the reasons previously stated in the motion, the defense respectfully moves this Court to order the government to provide a bill of particulars.

Respectfully submitted,

DANIEL EVERETTE HALE

By Counsel,
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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2019, I filed the foregoing via the CM/ECF system, which will electronically serve a copy upon counsel of record.

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